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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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India: Remedies to human rights violations a mirage

1. India has one of the most commended and emulated legal systems in Asia. The jurisprudence developed by the country's courts is model to developing and advanced jurisdictions alike in interpreting state responsibility on safeguard human rights guarantees. The judiciary in India enjoys a unique position, shared with only three other jurisdictions in Asia - Japan, Hong Kong and South Korea - concerning independence and absolute non-interference by the executive and by other powerful organs of the state, including the armed forces.

2. Yet, India is one of the least performers in the world when it comes to realisation of fundamental human rights guarantees to all its citizens, irrespective of their economic, religious and social status. The country performs poorly by comparison to rest of the world democracies, concerning the actualisation of remedies to human rights abuses.

3. One of the most serious concerns affecting the realisation of adequate and effective remedies to human rights abuses to victims is the enormous delay in adjudications. A litigation to complete in India could take often more than a decade. According to a statement made by the Prime Minister of India in the Lok Sabha in 2010, India has the largest backlog of cases in the world. This situation has not improved, since today, the country has an estimated 30 million cases pending disposal. Of this a substantial number of cases are more than a decade old. An estimated four million cases are pending before the country's High Courts and the Supreme Court itself has an estimated 65,000 cases pending before it.

4. In 2008 the Government of India set itself the target of having 50 serving judges per million people by 2013. However in 2012, when it became clear that India was far short of this goal, a less ambitious 5-year plan was announced: a doubling of the number of judges in "subordinate" courts (excluding High Courts and the Supreme Court). India's current ratio stands at less than 15 judges per million, and even if the new target were achieved, India would still be nowhere near to the United States, for example, where there are over 100 judges per million.

5. The Union Minister for Law and Justice, Mr. Kapil Sibal, while assuming office in 2013, promised radical changes to end this impasse. However, the unaddressed huge backlog of cases poses what Mr. Sibal's immediate predecessor in office stated, a "threat to constitutional democracy" that challenges the rule of law framework which has "failed to guarantee order and stability in society".

6. Delays in adjudication alone is not what that threatens rights to remedies for human rights abuses. Refusing to register complaints is the defining character of India's criminal justice system. This practice received the maximum and deserving bad press perhaps in 2013 when it was repeatedly revealed, that in many cases of sexual abuse against women including in cases of rape, the police have refused to register complaints. So much so, the most recent amendment to the criminal law in India, made effective through the Criminal Law (Amendment) Act, 2013, promulgated on 2 April 2013 incorporated a new Section to the Indian Penal Code, 1860, Section 166 A, that makes it a punishable offense for a public servant, to fail to register cases of sexual abuse against women.

7. Yet the fact that the implementation of this provision is least followed is proved through subsequent cases reported from India, where once again the police were accused and later proved of having failed to register cases after receiving credible complaints of sexual abuses against women. So far, not a single police officer in India who has contravened this provision of law has been charged with a crime punishable under this section or placed on trial.

8. In addition, crimes committed by the armed forces of the Union, particularly the detachments of the Indian Army or one of its many para-military units are excluded from being registered as crimes by the local police. In places where the notorious Armed Forces (Special Powers) Act, 1958 is in operation, the law provides statutory impunity to the armed forces from prosecution of crimes. In states like Jammu and Kashmir, and Manipur, where the armed forces deployed in these areas commit criminal offences with impunity in large numbers, including rape of women and extrajudicial execution of civilians, there has been no prosecutions so far of the armed forces in a civilian court. Neither has there been any commendable increase in the number of cases registered against members of the armed forces, even if the offence is of that nature covered under Section 166 A of the Penal Code.

9. The uniformed forces of the state commit a substantial number of human rights violations reported from India. This includes offences committed by the local police and the armed forces of the Union, of varying nature and gravity, including custodial rape, torture and extrajudicial executions. The fact that there is no independent crime-investigating agency in India, places the responsibility of investigating such crimes with the same agency negating the premises of independence and honesty in investigations.

10. Henceforth, even though offences like custodial rape, torture and extrajudicial executions in India is at an alarmingly high rate, there are hardly any cases registered against the members of these state agencies. Substantive impunity that has led to deep-rooted demoralisation and has fuelled corruption at all levels is the hallmark of the country's crime investigation agencies.

11. India today also lacks a legislation that provides witness protection. Threatening and intimidating of witnesses particularly in cases where the victims are pursuing a criminal complaint against a state agent, like a police officer is common in India.

12. Often the Public Prosecutor, who appears for the victim in a criminal case joins forces with the prosecuted state agent, thereby undermining the security of the victim as well as the witnesses in the case. Additionally, the office of the Public Prosecutor, is one of the most corrupt and inept institutions in the entire criminal justice administration setup in the country that is least spoken about or investigated so far.

13. India also lacks a legal and normative framework that sets universally acceptable standards for punitive and monetary compensation in cases where financial compensations are awarded for human rights abuses. Monetary compensation awarded for a human rights violation varies wildly between jurisdictions. For example if a civil litigation for compensation in a case of custodial torture fetches an award of Rupees one million in one state, the award may be as less as Rupees 25,000 in another case, tried and adjudicated in another jurisdiction under similar circumstances. The Supreme Court of India has so far refused to lay down any yardsticks for its lower courts while adjudicating similar claims. The payment of paltry compensation, as low as, sometimes a few thousand rupees serves as one of the most disheartening as well as discouraging factors for victims to approach the court seeking compensation for human rights abuses. Additionally the costs of the litigation far exceed the award, often ten to twenty times of the compensation awarded.

14. Due to the foregoing reasons, victims of human rights abuses face an exceptionally uphill task when they chose to pursue legal remedies against their cause. This situation stands in stark contrast to India's domestic as well as international human rights commitments. It negates each one of India's voluntary pledges to the Human Rights Council.

15. Therefore the Asian Legal Resource Centre (ALRC) request the Council to:

a. Urge India to take immediate steps to curb inordinate delays in adjudications, and;

b. Recommend that India undertakes a substantial review of its criminal justice framework that adequate and immediate changes are made to, most importantly its investigative framework, that it meets the requirements of fast advancing democracy.